

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
DOCKET FILE COPY ORIGINAL  
APR 11 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

)

)

) WT Docket No. 96-18

Revision of Part 22 and Part 90 of the  
Commission's Rules to Facilitate  
Future Development of  
Paging Systems

)

)

)

)

)

Implementation of Section 309(j)  
of the Communications Act--  
Competitive Bidding

)

)

)

PP Docket No. 93-253

PETITION FOR RECONSIDERATION  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Pursuant to 47 C.F.R. § 1.106 and 1.429, the National Telephone Association ("NTCA") submits this Petition for Reconsideration and Clarification of the Commission's *Second Report and Order* released in the above proceeding on February 24, 1997 (" *Second Report and Order*").

NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural America. A number of them utilize Basic Exchange Telephone Radio Systems ("BETRS") as the sole means to provide exchange access service to customers that would have no basic telephone service but for BETRS.

In the *Second Report and Order*, the Commission changes its prior policy and rules that recognized the critical importance of BETRS in bringing service to isolated and rugged areas

where wireline facilities cannot be efficiently deployed for the provision of basic telephone exchange service. In so doing, the Commission concludes that (1) BETRS will be licensed on a geographic area basis; (2) site licenses may be obtained but only on a secondary basis to paging systems; and (3) the frequencies used for BETRS operations that would be mutually exclusive with paging applications will be auctioned rather than awarded on a comparative hearing basis. In reaching each of these conclusions, the Commission has ignored applicable statutes and the public interest and seriously erred.

**I. THE COMMISSION'S DECISION TO ABANDON ITS BETRS POLICY IS ARBITRARY AND CAPRICIOUS.**

The Commission created the BETRS service specifically to promote affordable service in difficult to serve rural areas. In doing so, it called its decision to create BETRS "a major step by the Commission in the pursuit of our goal of extending basic telephone service to as many Americans as possible . . . ."<sup>1</sup> BETRS was intended to fulfill the Commission's obligation to pursue Universal Service in the country.<sup>2</sup> The Commission now abandons its commitment to the service with a cursory conclusion that its decision will "not deprive rural areas of local exchange service or result in higher costs to BETRS customers."<sup>3</sup> There is no factual basis in the record for this conclusion. The facts indicate just the opposite.

---

<sup>1</sup> *In the Matter of Basic Exchange Telecommunications Service, Report and Order*, CC Docket No. 86-495, 3 FCC Rcd 214, 219 (1988).

<sup>2</sup> *Id.*

<sup>3</sup> *Second Report and Order*, ¶ 34.

BETRS is a unique service designed for rugged rural areas where the cost of installing wire or cable loops is prohibitively expensive.<sup>4</sup> If the Commission proceeds with its decision to require site specific licensees to operate on a secondary basis and terminate operations upon receipt of six months notice of interference by a paging licensee, there is a very high probability that subscribers to the service will be left without any local exchange service.

The Commission incorrectly concludes that it may not be logical to exempt BETRS from geographic area licensing and auctions on the basis that the local exchange service provided by BETRS may be provided by wireless or wireline providers in the future. The Commission's speculation is without basis and, in any event, does not justify a change of its rules. That speculation also fails to provide a reasoned explanation for the change of the policy announced in the *Competitive Bidding Second Report and Order*.<sup>5</sup> In that Order, the Commission concluded that it would not be in the public interest to require BETRS applicants to bid against radio common carriers for frequencies that are needed to provide a less costly alternative to wireline services. BETRS is still a less costly alternative to wireline as well as other radio common carrier services. That fact has not changed and the Commission should not arbitrarily abandon its finding that it is still not in the public interest to auction BETRS frequencies. Fixed cellular or PCS service cannot economically accommodate the unique need for long wireless loops that BETRS fulfills. Further, there is no evidence that local exchange carriers eligible to provide the service will have ready access to other frequencies or substitute wire or cable service to meet the

---

<sup>4</sup> 3 FCC Rcd 214, 219 (1988).

<sup>5</sup> Implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket NO. 93-253, 9 FCC Rcd 2348, 2356, (1994).

needs of BETRS subscribers located in remote and isolated areas. BETRS is an alternative precisely because of the high cost of wire and cable loops. The cost of installing a cellular or PCS network to meet the needs of a few remote subscribers are likely to be even more prohibitive than the costs of wire or cable. PCS is unlikely to be a viable alternative for these areas as that service requires high densities and short ranges for efficient operations.

There is still a need for the BETRS service. The Commission should reconsider its decision and prevent changes that will relegate the service to extinction. Under existing rules, BETRS in the 150MHz and 450 MHz bands is authorized on a co-primary basis with other services. In authorizing co-primary operations the Commission found that sharing of the bands was appropriate in rural areas where these frequencies were not heavily used. The record in this proceeding contains no evidence to support the Commission's conclusion that there is limited demand for expansion by BETRS into new areas in recent years.<sup>6</sup> In fact, the Commission has before it a petition to which demonstrates the continued need for additional frequencies to accommodate the needs of potential subscribers in difficult to reach areas.<sup>7</sup> That petition filed in 1992 and supported by 16 parties has never been acted on by the Commission. Petitioners requested the allocation of additional frequencies for BETRS based on the demonstrated need for additional spectrum to accommodate the unmet need for BETRS channels. The petitioners pointed out that it was not demand but spectrum scarcity that restricted BETRS growth and expansion.<sup>8</sup>

---

<sup>6</sup> *Second Report and Order*, n. 104.

<sup>7</sup> Petition for Rulemaking, RM-8159, attachment hereto, ("Petition").

<sup>8</sup> Petition at p. 4.

## II. THE COMMISSION'S DECISION TO ABANDON ITS BETRS POLICY IS AGAINST THE PUBLIC INTEREST.

The Commission's decision to give paging services priority over BETRS is inconsistent with Section 309(j) of the Communications Act. Section 309(j) (3) requires the Commission to "include safeguards to protect the public interest in the use of the spectrum. . . and promote the purposes specified in Section 1 [pertaining to universal service] " in deciding whether to use and how to design competitive bidding systems for the licenses it awards. The Commission has not considered its universal service goals or purposes in arriving at the conclusion to auction geographic areas that effectively preclude the BETRS service. It merely concludes that competitive bidding will not deprive rural areas of services without considering the success of the BETRS service in rural areas that are uniquely rugged and present insurmountable physical or financial obstacles for alternative technologies. Instead of including safeguards or establishing priorities to ensure that carriers have the means to provide the services to be defined in its universal service docket, the Commission rules would permit paging licensees to shut down BETRS operations delivering these services.<sup>9</sup>

Nothing in the record indicates why paging operations will serve a greater public purpose in rural areas than will BETRS operations. BETRS is essential to the delivery of local exchange service in the rugged rural areas where it is used or has the potential of being used. The eligibility requirements for the service demonstrate the importance of the service to the

---

<sup>9</sup> The Federal-State Joint Board on universal service has recommended that universal service be defined to include single-party service, voice grade access to the public switched telephone network, touch tone services, access to 911, access to operator services, and access to interexchange services. *See*, 47 C. F. R Chapter 1, Universal Service, Recommended Decision 61 Fed. Reg. 63779, 63780 (December 2, 1996). These essentials are part and parcel of local exchange service capabilities built into BETRS.

Commission's attainment of its universal service goals. Only carriers that have obtained state approval to provide the service may do so.<sup>10</sup> Subscribers do not avail themselves of the service as a luxury. The service is more of an essential service than paging in the areas where it is authorized and where there is less likely to be a high demand for service.

The Commission's decision to place the service on a secondary basis does not promote any greater public good but merely places potential BETRS licensees needing the frequencies for specific sites at the mercy of paging licensees. The decision is tantamount to the elimination of any new BETRS operations on these frequencies as licensees would have no assurances that their operations cannot be extinguished on six months' notice. The distorted public policy which this rule change represents can be cured if the Commission retains its prior rule and permits new BETRS site specific licensees to operate on a co-primary basis with paging operations. This will ensure that the frequencies remain available for the delivery of essential local exchange service in the unique situations where BETRS is the most feasible option for attaining universal service goals.

Retention of the prior rule would also cure the bias against BETRS that the geographic licensing rules implicitly create. It is unrealistic, for example, to expect a LEC that needs BETRS for a limited number of subscribers to bid for an entire Economic Area. The Commission justification for establishing EAs as the geographic area that will be used for the bands that include BETRS is that the areas "will enhance their [referring to licensees] ability to construct wide-area systems."<sup>11</sup> This rationale makes no sense for BETRS applicants interested

---

<sup>10</sup> 47 C.F.R. § 22.702.

<sup>11</sup> *Second Report and Order*, ¶ 23.

in serving limited numbers of isolated subscribers.

The Commission obviously ignored the interests of BETRS licensees and the public in arriving at this conclusion. NTCA urges it to reconsider its decision and correct its fallacy by, at least, maintaining current rules providing future site specific licensees the ability to operate on a coprimary basis. The Commission cannot expect its partitioning rules to alleviate the problem created by relegating BETRS to secondary status and instituting competitive bidding. There will be limited incentives for LECs to seek partitioned licenses that carry with them the potential that operations will have to cease on six months' notice of interference from paging licensees.

**III. THE COMMISSION FAILED TO CONSIDER ALTERNATIVES THAT MINIMIZE THE IMPACT OF ITS RULES ON THE SMALL LECs THAT REQUIRE BETRS TO SERVE THEIR SUBSCRIBERS.**

In its Regulatory Flexibility Analysis ("RFA"), the Commission completely fails to analyze the effects of its rules on the small LECs that require BETRS to expand or provide service in remote areas. Small LECs are "small business concerns" under the SBA's definitions. All NTCA members, for example, have fewer than 1500 employees and meet the SBA threshold for radiotelephone companies that the Commission references.<sup>12</sup> Because these companies are subject to the protections of the RFA, the Commission was required to consider the various alternatives parties suggested to minimize the adverse impact of the rule changes adopted. Instead of considering these impacts, the Commission does not even mention BETRS and the fact, for example, that BETRS operators required to terminate operations upon notification of interference would be left with no means of recovering their investments. Similarly, it fails to mention the adverse economic impact the companies will suffer as a result of auctions that pit

---

<sup>12</sup> 13 C.F.R. § 121.201, SIC Code 4812.

them against paging operations that have no interest in the site licenses needed for BETRS operations.

### CONCLUSION

For the above stated reasons, NTCA requests that the Commission reconsider its decision to auction BETRS spectrum and to relegate new site licensees to secondary status. NTCA also requests that the Commission grant petitioners' request in RM-8159.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION

By: David Cosson  
David Cosson  
(202) 298-2326

By: L. Marie Guillory  
L. Marie Guillory  
(202) 298-2359

Its Attorneys

2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

April 11, 1997



CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration of the National Telephone Cooperative Association in WT Docket No. 96-18 PP Docket No. 93-253 was served on this 11th day of April 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
\_\_\_\_\_  
Gail C. Malloy

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814-0101  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802-0106  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844-0105  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832-0104  
Washington, D.C. 20554

Mr. Kent Nilsson, Chief  
Network Service Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 L Street, N.W., Room 253  
Washington, D.C. 20554

International Transcription Service  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037